

IN THE UNITED STATES DISTRICT COURT FOR
THE EASTERN DISTRICT OF VIRGINIA
Alexandria Division

UNITED STATES,

V.

Crim. No. 1:09cr463
The Hon. Anthony Trenga

ADOLFO AMAYA-PORTILLO,
Defendant.

DEFENDANT'S MOTION TO PERMIT USE OF A JURY QUESTIONNAIRE

Comes now Defendant Adolfo Amaya-Portillo, by and through counsel, and moves this Court to permit the use of a jury questionnaire for use by counsel preliminary to *voir dire*. Defendant incorporates herein the arguments and authorities of the motion for the same relief by co-defendant Eris Arguera and of Defendant's motion for individual sequestered *voir dire* by counsel.

Media treatment of immigrants in general, Hispanic immigrants in particular, and of crimes, attributed to MS-13 and otherwise, by Hispanics, has undoubtedly engendered varying degrees of animus against all of these groups among a significant sector of the metropolitan Washington, D.C. community. It will be extremely difficult through the *voir dire* process alone to determine adequately a prospective juror's attitudes and knowledge about the case, MS-13, and the Defendant as an alleged member and Hispanic immigrant. Even should the Court preclude the presentation of any evidence regarding MS-13, the communal animus against Hispanics is sufficient to mandate special measures to ensure that the jury ultimately selected to hear this case is untainted and impartial.

Defendant faces life imprisonment or death if convicted. Experience indicates that

jurors are often reluctant openly to express knowledge, information and relevant opinions and attitudes, in a face – to – face conversation. A jury questionnaire will provide useful information, expedite hardship excusals, shorten *voir dire* and, ultimately, increase the likelihood of obtaining a fair and impartial jury.

Defendant requests the jury questionnaire include the following questions (excluding a. and b. should the Court preclude presentation of evidence pertaining to MS-13) and that respondents be asked to expound on any affirmative response:

a.) “Have you read or heard any publicity or news report about MS-13 otherwise known as Mara Salvatrucha?

b.) “Have you, any member of your family or any close friends ever had any connection with a gang, to include MS-13, either as a member, associate, victim or witness of conduct by gang members?

c.) “An interpreter is employed to assure the most thorough understanding, by the witnesses as well as the jury, of the words spoken in the trial. The defendant and some, if not most, of the witnesses using an interpreter have some understanding of English and may register comprehension of a question before it is translated. This should not be taken to suggest any desire to mislead the jury by the use of an interpreter. The defendant will be enjoying the services of an interpreter because he is of Hispanic extraction and Spanish is his native language. Do you have any negative or unfavorable impression or belief or any concern whatsoever about people born in Central or South America?

Do you believe:

1. People born in Central or South America and in the United States are likely here illegally?
2. People born in Central or South America deserve a lesser standard of justice or greater scrutiny because they are probably not really supposed to be here in the first place?
3. People born in Central or South America are less trustworthy?
4. People born in Central or South America are more inclined to drink to excess, take drugs, or generally behave irresponsibly?
5. People born in Central or South America are more inclined to be violent?
6. People born in Central or South America deserve harsher punishment if they commit a crime because they are already accustomed to being

uncomfortable or deprived?

d.) "Do any of you have strong opinions on immigration or believe that our immigration laws or the manner of their enforcement need to be changed?

e.) "Has any of you or anyone close to you suffered a crime of violence?

f.) "Has any of you or anyone close to you worked in law enforcement?

g.) "Do any of you believe our criminal laws are too lenient?

h.) "Do any of you believe criminals go free because the rules by which we try them favor the defendant too much?

Respectfully Submitted,

ADOLFO AMAYA-PORTILLO
By Counsel

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Certificate of Service

I hereby certify that on February 18, 2010, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system with consequent service on counsel for all parties.

/s/
John C. Kiyonaga